[J-154]

In The

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-413

ADELYN J. CRAWFORD,

Appellant,

— against —

THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

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Now comes Robert Abrams, Attorney General of the State of New York (Jeremiah Jochnowitz, Assistant Solicitor General, of counsel) and moves this Honorable Court pursuant to Rule 16 of the Rules of this Court for an order to dismiss or affirm on the ground that no substantial federal question is properly before the Court insofar as the decision of the State court sought to be reviewed did not pass on any federal constitutional question, and the decision of the State court rests upon an adequate State ground.

Dated: November 29, 1979

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Appellee

Statement

This is an attempted appeal from a State court determination in a civil action for damages arising out of an alleged false imprisonment. The State court held that appellant was properly committed to civil mental institutions under the laws in effect during the term of her confinement by courts of competent jurisdiction, and therefore, there was no false imprisonment.

Facts

Following appellant's arraignment on a charge of malicious mischief and forceable entry, she was ordered by the court to be psychiatrically evaluated to determine whether she was capable of understanding the charges against her and of assisting in her defense. After examination by two psychiatrists, the conclusion was reached that by reason of insanity she was incapable of defending herself and civil commitment was recommended (App Appendix, D-72). Appellant was thereafter certified by the Dutchess County Court to be mentally ill pursuant to the Mental Hygiene Law and was ordered committed on April 6, 1955 to Harlem Valley State Hospital. At that time, State law did not require periodic judicial review of orders of commitment, and the order of April 6, 1955 was not limited in duration. It was not until 1968 that Mental Hygiene Law § 73 was amended to require periodic additional retention orders to be secured if the hospital administration felt the patient's condition required such action.

Subsequent to this 1968 amendment, the hospital filed a petition on November 21, 1968 for appellant's continued retention for a period of twelve months, with notice served on appellant's Committee. (Appellant's mother, Anna Cummins had been appointed Committee on October 31, 1956, and served in that capacity filing annual accountings in Westchester County Supreme Court until she was relieved of her duties in June,

1962. Thereafter, an attorney, Richard Nadelman, was appointed successor Committee on September 17, 1962, and continued in that capacity, also filing annual reports with the court, until he was relieved on September 11, 1969.) An order was entered for a further retention of twelve months.

On June 18, 1969, an additional request for a further twelve month retention order was filed with notice to the appellant. A hearing was held before a Justice of the Supreme Court, Westchester County, at which appellant was represented by counsel, and testimony was heard from appellant and a hospital physician. A further twelve month retention order was made, and thereafter an additional 24 month retention order was sought and granted in 1970, after notice to appellant's Committee.

Subsequently, on November 9, 1972, appellant made a voluntary request for further hospitalization and she remained hospitalized voluntarily until discharged on January 24, 1973. Appellant thereafter brought on this civil action for money damages for an alleged false imprisonment.

ARGUMENT

APPEAL OR CERTIORARI DOES NOT LIE FROM THE ORDER AND JUDGMENT OF THE STATE COURT WHERE THE STATE COURT DID NOT PASS ON A FEDERAL QUESTION AND WHERE THE STATE COURT DECISION RESTS ON ADEQUATE STATE GROUNDS.

Let it be clear at the outset that this is not a proceeding seeking release from custody, nor a federal civil rights action. It is simply an action in tort against the sovereign State of New York, seeking money damages. The decision of the State court sought to be reviewed did not expressly pass on any federal question and therefore this appeal or certiorari, should not lie (*Newsom* v *Smith*, 365 US 604).

The State of New York, as sovereign, may be sued in tort only insofar as it has waived its sovereign immunity (cf *Edelman* v *Jordan*, 415 US 651; *Petty* v *Tennessee-Missouri Bridge Comm.*, 359 US 275; *McDonald* v *State of Illinois*, 557 F2d 596, cert den 434 US 966). The State courts herein have factually found that there is no allegation in appellant's claim that the original order of commitment in 1955 and the subsequent orders of further retention obtained in 1968, 1969 and 1970 were invalid on their face or that the courts lacked jurisdiction (App Appendix, A-7). Furthermore, as to any claims of negligence herein, the State of New York has not waived its immunity from liability for medical misdiagnosis, or for governmental and administrative determinations (App Appendix, A-8).

Appellant asserts that the State court lost jurisdiction by failing to serve her with the original notice of commitment. Such service was not at that time required by State laws (App Appendix, D-77), and while that may have made the order subsequently attackable, the order never was subsequently challenged and no jurisdictional defect would be apparent to the confining authorities. New York law concerning a civil action for money damages, protects its officials acting on commitment papers apparently valid, from liability even if there were a defect in the jurisdiction of the issuing court (*Nuernberger* v *State of New York*, 41 NY2d 111; *Woolsey* v *Morris*, 96 NY 311; *Ferrucci* v *State of New York*, 42 AD2d 359, affd 34 NY 2d 881).

In *Nuernberger, supra*, at pages 112-113, the New York State Court of Appeals held:

> "The issue, nevertheless, is whether the State is protected against a claim for false imprisonment when its administrative officials acted upon commitment papers issued by [a court lacking jurisdiction]. * * * [E]ven if such process or mandate is void, it does not automatically follow that one affected by any kind of 'void' process or mandate is entitled damages because those obligated to enforce the 'void' process or mandate performed the duty imposed upon them by law.
>
> * * *

> "Indeed, this Court has recognized that a defect in a court's 'jurisdiction' * * * may be a basis for habeas corpus relief, but no ground on which to recover damages for false imprisonment." (at p 115)

In *Woolsey* v *Morris*, 96 NY 311, the Court held (at 315):

> "[A] ministerial officer is protected in the execution of process regular on its face, issued by a court, body or officer having general jurisdiction of the subject matter, or jurisdiction to issue it under certain circumstances, although in fact, jurisdiction of the person or subject matter did not exist in the particular case."

In *Ferrucci* v *State of New York*, 42 AD2d 359, affd 34 NY 2d 881, the Appellate Division of the Supreme Court of the State of New York held (at p 361):

> "When the court issuing a commitment to a mental institution has jurisdiction and the legal process is valid on its face and does not of itself give notice of any legal invalidity, the State is not answerable in damages [cit. om.]; nor is it even liable for an illegal confinement, if made pursuant to court directives clothed with said attributes (*Jamieson* v. *State of New York*, 7 A D 2d 944; *Nastasi* v. *State of New York*, 275 App Div 524, affd. 300 N Y 473)."

Since New York State has not waived its immunity from liability for a tort action for false imprisonment where a commitment is predicated on court papers not apparently invalid, there is an adequate State ground for the decision sought to be appealed, and the federal question sought to be raised is not properly in issue. Moreover, this Court previously refused certiorari in a nearly identical case, *Dennison* v *State of New York*, 25 NY2d 904, cert den 397 US 923, wherein the New York Court of Appeals had held:

> "Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz: Claimant argued that his commitment in 1936 and his retention pursuant to the then existing section 384 of the Correction Law constituted a violation of his rights under the equal protection clause (see *Baxstrom* v. *Herold*, 383 U.S. 107), entitling him to

damages for his retention in a criminal rather than a civil hospital for the insane. The Court of Appeals considered this contention and held that claimant had no right to damages based on a retrospective application of *Baxstrom* v. *Herold* (*supra*)."

Accordingly, there is no substantial federal question supporting review by this Court; the State's waiver of immunity does not extend to the factual allegations of appellant's claim; and the appeal should be dismissed.

CONCLUSION

THE APPEAL SHOULD BE DISMISSED.

Dated: November 29, 1979

Respectfully submitted,

ROBERT ABRAMS
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State of New York
Attorney for The State of New York

WILLIAM J. KOGAN
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